ASSOCIATED MOTOR INDUSTRIES SDN BHD

v.

CHAN HOCK LEONG

HIGH COURT MALAYA, KUALA LUMPUR
FAIZA TAMBY CHIK J
[ORIGINATING MOTION NO: R2-25-98-1998]
3 NOVEMBER 1999

LABOUR LAW: *Industrial Court - Award - Interpretation of terms of award - Whether proper procedure followed - Whether court acted in excess of jurisdiction - Industrial Relations Act 1967, ss. 33, 56*

LABOUR LAW: *Industrial Court - Award - Order of reinstatement - Meaning of - Whether complied*

The respondent was dismissed from his employment by the applicant and pursuant to representations made under s. 20 of the Industrial Relations Act 1967 ('the IRA') the dismissal was referred to the Industrial Court for a decision. The Industrial Court handed its decision ('the first award') and held that the dismissal of the respondent was without just cause and excuse and ordered his reinstatement in addition to backwages which was limited to 24 months. The respondent was reinstated to his former position but it was an express term of the respondent's employment with the applicant that during the continuance of his employment with the applicant he was not to engage directly or indirectly in any other businesses or occupation. In view of this, the respondent was asked to confirm his resignation with Car Seats (Malaysia) in writing. The respondent however informed the applicant that he would not be reporting for work. The respondent then lodged an application for non-compliance under s. 56 of the IRA. The respondent also made an application under s. 33 of the IRA, seeking to vary the first award. The application to vary was dismissed by the Industrial Court by its decision in the second award. The respondent then commenced *certiorari* proceedings in the High Court to quash the second award. This was dismissed. The respondent has since appealed to the Court of Appeal.

The complaint of non-compliance was heard by the Industrial Court and the Industrial Court subsequently handed down its decision in the third award which stated that the applicant had failed to reinstate the respondent as ordered by the Industrial Court in the first award. The applicant now seeks to quash the third award.

Among the issues for consideration were whether: (i) the respondent's complaint was premature; (ii) the Industrial Court acted in excess and without jurisdiction; (iii) the Industrial Court misinterpreted the law.

Held:

[1] Under s. 56 of the IRA, the Industrial Court is charged with the enforcement of an award or collective agreement which has been taken cognisance of by the court after a complaint has been received alleging non-compliance with one or more terms of the award or said collective agreement. The Industrial Court is not charged with the duty of interpreting or adjudicating the term or terms of an award or collective agreement which are disputed by the contracting parties concerned.

[1a] If there was any dispute as to the interpretation, the proper course was for the respondent to have this dispute resolved by way of application for interpretation under s. 33 of the IRA.

[1b] It is to be noted too that the respondent himself had earlier applied for a variation of the first award on the basis that the reinstatement order was ambiguous and uncertain. Since the terms of the first award are being disputed by the respondent himself it was not open for the respondent to seek compliance of the very term that he was disputing in a separate application.

[1c] The Industrial Court therefore acted in excess of jurisdiction when it had purported to interpret the first award.

[2] The order of reinstatement was not a continuing act but involved a single act of the employer to put the employee back in employment as if he had not been dismissed. Once the employee had been put back the order of reinstatement had been complied with. Thereafter whatever happens to the employee falls outside the scope of the reinstatement order. If the employee has any grievance with the employer over what occurs after the reinstatement, it would constitute a separate cause of action.

[2a] The facts showed that the respondent had been reinstated. Therefore, it followed that there was no non-compliance within the meaning of s. 56 of the IRA. The Industrial Court in concluding otherwise had acted in excess of its jurisdiction.

[3] It was an express term of the respondent's employment with the applicant that he could not be in gainful employment elsewhere. Similarly it was implicit in any order of reinstatement that the employee must leave his current employer in order to comply with the reinstatement order. It therefore followed that the applicant's request for the written confirmation was justified. It was made in furtherance of the company's reinstatement of the respondent.

[3a] Even if the applicant had said that it will not reinstate the respondent or that it would treat the reinstatement as void, until and unless the event occurs, there is no non-compliance. The respondent had pre-empted the entire matter by refusing to report for duty.

[Application allowed.]

Case(s) referred to:

Dragon & Phoenix Berhad v. Pekerja-Pekerja Perusahaan Membuat Tekstil dan Pakaian & Anor [1991] 1 CLJ 244 ***(foll)***

Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor [1996] 4 CLJ 687 ***(refd)***

Holiday Inn Kuala Lumpur v. National Union of Hotel, Bar and Restaurant Workers [1988] 1 CLJ 133 ***(foll)***

Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union [1995] 2 CLJ 748 ***(refd)***

Thilagavathy Alagan Muthiah v. Meng Sing Glass Sdn Bhd & Anor [1997] 4 CLJ Supp 368 ***(refd)***

V Subramaniam & Ors v. Craigielea Estate [1982] 1 MLJ 317 ***(refd)***

Legislation referred to:

Industrial Relations Act 1967, ss. 20(1), (3), 32(1)(a), 33(2), 33B(1), 56

Rules of the High Court 1980, O. 22, O. 53, O. 56(2)

Other source referred to:

The Law of Industrial Disputes, OP Malhotra, 5th edn, vol 2

For the applicant - N Sivabalah; M/s Shearn Delamore & Co

For the respondent - LG Seah; M/s Lobo & Co

Reported by Mariette Peters-Goh

JUDGMENT

Faiza Tamby Chik J:

This is an application in the originating motion dated 15 December 1998 (encl. 7) for, *inter alia*, an order of *certiorari* to quash the decision of the Industrial Court in Award No. 379 of 1998 dated 27 July 1998. The application is supported by the statement pursuant to O. 53 of the Rules

of the High Court, 1980 dated 8 September 1998 and the affidavit of Mohamad bin Yusop affirmed on 7 September 1998 ("the applicant's affidavit) and the affidavit of Sivabalah Nadarajah affirmed on 3 February 1999 (annexing the Industrial Court's Notes of Proceedings).

Facts Leading to the Dispute

The respondent was dismissed from the employment of the applicant with immediate effect by a letter dated 8 August 1988 (p. 25 of applicant's affidavit). Pursuant to representations made by the respondent under s. 20 of the Industrial Relations Act 1967 ("the Act"), the dismissal was referred to the Industrial Court Case No. 5/4-39/89. Pursuant to the hearing before it, the Industrial Court handed down its decision in Award No. 322 of 1993 dated 16 October 1993 (the first award, pp. 27-51 applicant's affidavit). The Industrial Court in the first award held that the dismissal of the respondent to be without just cause and excuse and ordered his reinstatement in addition to backwages which was limited to 24 months. The applicant in compliance with the terms of the first award, reinstated the respondent *vide* a letter dated 3 November 1993 (p. 52 applicant's affidavit) to his former position as supply manager on the same terms as that he was enjoying as at the date of dismissal with no loss of seniority, service and benefits. The respondent was required to report for duty on 22 November 1993. The applicant, by a letter dated 16 November 1993 confirmed that the respondent had reported for duty and was required to resume active duty on 22 November 1993 when the applicant's plant resumed operations after its shutdown (p. 53 applicant's affidavit). It was an express term of the respondent's employment with the applicant, that during the continuance of his employment with the applicant he was not to 'engage directly or indirectly in any other business or occupation' (p. 54 applicant's affidavit).

In view of the foregoing, the respondent was asked to confirm his resignation with Car Seats (Malaysia) in writing. Thereafter, by a letter dated 17 November 1993, the respondent informed the applicant, *inter alia*, that he would not be reporting for work on 22 November 1993 (p. 58 applicant's affidavit). The applicant duly replied to the above-named letter *vide* its letter dated 19 November 1993 (p. 59 applicant's affidavit). The respondent thereafter, lodged an application in form S on 17 November 1993 for non-compliance under s. 56 of the Act, in respect of the orders of the Industrial Court at pp. 24 and 25 of the first award. Additionally, the respondent made an application in Form N dated 17 November seeking variation of the first award under s. 33 of the Act (pp. 60 and 61 applicant's affidavit).

The respondent's application to vary the first award, was dismissed by the Industrial Court by its decision in Award No. 185 of 1997 ("the second award"). Thereafter, the respondent commenced *certiorari* proceedings in the High Court to quash the second award, Originating Motion No. R3-25-79-97 which was dismissed on 8 May 1998. The respondent had since appealed to the Court of Appeal in respect of the aforesaid High Court decision (pp. 63 and 70 applicant's affidavit). The complaint of non-compliance was heard by the Industrial Court on 17 October 1997 and the parties were then directed to put in written submissions (pp. 74-86, 87-106 and 107-114 of applicant's affidavit). The Industrial Court subsequently handed down its decision in Award No. 379 of 1998 dated 27 July 1998 (the "third award") (pp. 123-145 of applicant's affidavit). The Industrial Court in the third award held, *inter alia,* that the applicant had failed to reinstate the respondent as ordered by the first award and the applicant was ordered, *inter alia,* to reinstate the respondent on 17 August 1998. By this application, the applicant seeks to quash the aforesaid award.

The law on judicial review has been succinctly restated by the Federal Court in *Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor* [1996] 4 CLJ 687. The Federal Court at p. 710 cited the following passage from *Syarikat Kenderaan Melayu Kelantan Bhd. v. Transport Workers Union* [1995] 2 CLJ 748 and held that:

> An inferior tribunal or other decision-making authority, whether exercising a quasi-judicial function or purely an administrative function, has no jurisdiction to commit an error of law. Henceforth, it is no longer of concern of whether the error of law is jurisdictional or not. If an inferior tribunal or other public decision-taker does make such an error, then he exceeds his jurisdiction. So too is jurisdiction exceeded, where resort is had to an unfair procedure (see *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis* [1995] 1 CLJ 619), or where the decision reached is unreasonable, in the sense that no reasonable tribunal similarly circumstanced would have arrived at the impugned decision.
>
> It is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law, for the categories of such an error are not closed. But it may be safely said that an error of law would be disclosed if the decision-maker asks himself the wrong question or takes into account irrelevant considerations or omits to take into account relevant considerations (what may be conveniently termed an Anisminic error) of if he miscontrues the terms of any relevant statute, or misapplies or misstates a principle of the general law.

> Since an inferior tribunal has no jurisdiction to make an error of law, its decisions will not be immunized from judicial review by an ouster clause however widely drafted.

In the third award, the Industrial Court held, *inter alia,* as follows:

> After considering the evidence and the submissions we unanimously find that the Company had not in fact reinstated the Claimant as ordered by the said Award. Although the Company requested the Claimant to report for duty on 16th November 1993 and which he did the Company by requiring the Claimant to produce by 18th November 1993 written confirmation from Car Seats (M) Sdn. Bhd. that he was no longer employed by that Company and stating that in the event of the Claimant failing to do so the Company is at liberty to treat the reinstatement as being void had diluted and varied the effect of the order. It purported to impose a condition when none was stipulated and thus the Company had failed to comply with the order of reinstatement. The said Award did not contain any such requirement as a condition precedent to be fulfilled by the Claimant.

It was the applicant's submission that, in ordering compliance, the Industrial Court acted in excess of and/or without jurisdiction when it failed to dismiss the respondent's complaint of non-compliance on the grounds that it was premature and that the Industrial Court acted in excess of and/or without jurisdiction when it purported to rule that the applicant had failed to reinstate the respondent. The jurisdictional errors committed by the Industrial Court was summarised by the applicant as follows:

(i) it took irrelevant matters in consideration;

(ii) it failed to take relevant matters into consideration;

(iii) it misconstrued and/or misinterpreted the law; and

(iv) it reached a decision that was so perverse and devoid of plausible justification that no reasonable tribunal similarly circumstanced would have reached it.

A perusal of the third award will show that the Industrial Court's decision was based entirely on its construction and interpretation of the applicant's letter dated 16 November 1993 (p. 53 of the applicant's affidavit) and the respondent's reply dated 17 November 1993 (p. 58 of the applicant's affidavit). It should have been apparent to the Industrial Court that the moment there was a dispute as to the interpretation and construction of what amounted to a reinstatement within the terms of the first award, it was no longer seized of jurisdiction to hear the complaint. It was not open to the Industrial Court in an application under s. 56 of the Act to interpret

or construct the terms of the first award. If there was any dispute as to interpretation, the proper course was for the respondent to have this dispute resolved by way of application for interpretation under s. 33 of the Act. This was precisely what was decided by the Supreme Court in *Holiday Inn Kuala Lumpur v. National Union of Hotel, Bar and Restaurant Workers* [1988] 1 CLJ 133. There, the Supreme Court held (per Seah SCJ):

> In my judgment, under section 56 of the Act the Industrial Court is charged with the enforcement of an award or collective agreement which has been taken cognisance of the court after a complaint has been received alleging non-compliance with one or more terms of the award or said collective agreement. On the authority of the Federal Hotel case, the Industrial Court is not charged with the duty of interpreting or adjudicating the term or terms of an award or collective agreement which are disputed by the contracting parties concerned. Section 33 provides for this and the legislature has laid down certain procedures to be followed when a complaint is made pursuant to this section. The function of the Industrial Court under section 33 can only be exercised on a definite application made for that purpose (see the Federal Hotel case). In other words, any question of interpretation or adjudication of a term of an award or collective agreement is not within the scope of section 56.

Earlier at p. 139, Lee Hun Hoe CJ stated:

> ... an aggrieved party whose object is to seek interpretation of the collective agreement can indirectly invoke section 56 by merely making a complaint of noncompliance of a term of a collective agreement thus bypassing section 33. No doubt it will take time under section 33 for the matter to reach the Industrial Court. But that is not a reason for bypassing section 33 under the guise of a breach of a term of a collective agreement.

The foregoing view was also reiterated by the Supreme Court in *Dragon & Phoenix Berhad v. Pekerja-Pekerja Perusahaan Membuat Tekstil dan Pakaian & Anor.* [1991] 1 CLJ 244. In both these cases, the orders of compliance by the Industrial Court were quashed as being made in excess of jurisdiction, in that, the Industrial Court in both cases had purported to interpret the collective agreement/award in the respective applications under s. 56 of the Act.

It is also extremely relevant to note that the respondent in an earlier application for variation under s. 33(2) in Form N (pp. 62 to 63 of the applicant's affidavit) had, himself contended that the reinstatement order was ambiguous and uncertain. In paragraph 1 of the Annexure to Form N (p. 63), the respondent specifically pleaded that:

> The order for 'reinstatement' is ambiguous and uncertain when viewed against the Order for payment of backwages/arrears of salary.

In para. 2 of the Annexure to Form N, the respondent contended:

> Hence when the Court orders 'reinstatement' but limits backwages for 2 years, the order for reinstatement is ambiguous and uncertain and ought to be varied to reflect the primary reinstatement order.

The respondent's application for variation was dismissed by the Industrial Court in the second award and the respondent's application to quash the second award was subsequently dismissed by this court. The respondent is appealing to the Court of Appeal against this court's decision.

It was contended that the purpose of the application for variation was confined solely to the first award's limitation of backwages to two years. While that may have been the intention, this was not expressly stated in the variation application and the fact remained that the application for variation proceeded on the premise that the limiting backwages to two years would render the order of reinstatement ambiguous and uncertain. Since the terms of the first award was being disputed by the respondent himself, it was not open for the respondent to seek compliance of the very term that he was disputing in a separate application. In the face of the clear dispute over the reinstatement order, the Industrial Court had no jurisdiction to entertain the respondent's complaint of non-compliance.

The relevant order of reinstatement of the first award (at p. 50 of the applicant's affidavit) reads as follows:

> On the question of reinstatement, it would be in the best interest of both parties that Claimant be reinstated in his former position as Supply Manager of the company on the same terms as he then as with no loss of seniority, service and benefits. The company is to issue an appointment letter to Claimant through his counsel, Mr. Lobo of Messrs. Lobo & Associates, 5th floor, Straits Trading Building, No. 4, Leboh Pasar Besar, 50050 Kuala Lumpur, one (1) month from the date of this award. If the Claimant fails to report for duty on this date it become void.

By the letter dated 3 November 1993 (p. 52 of applicant's affidavit), the respondent was informed as follows:

> In accordance with the aforesaid Award No. 322 of 1993, you are hereby reinstated to your former position as Supply Manager on the same terms as you were enjoying as at the date of your dismissal with no loss of seniority, service and benefits.

> There will be a shut-down of the Plant's operation from 12th November 1993 to 21st November 1993. Under the circumstances, you are to report for duty on 16th November 1993 at 8.00 a.m. at our Head Office, Human Resources Division, 7th floor, West Wing, Wisma Tractors, No.7, Jalan SS 16/1, 47500 Subang Jaya, Petaling Jaya, Selangor. You are to see the undersigned to confirm that you have reported for duty and for purposes of further instructions.
>
> Take note that, as provided in the aforesaid Award, should you fail to report for duty on 16th November 1993, your reinstatement shall become void.

The respondent duly reported for duty on 16 November 1993 and this was confirmed by the applicant's letter dated 16 November 1993 (p. 53 of the applicant's affidavit) as follows:

> This is to confirm that you have reported for duty today.

The foregoing confirmed and established the fact that the respondent was reinstated. The moment the fact of reinstatement has been established, it means that that the reinstatement order of the first award had already been complied with. Accordingly, there could be no non-compliance of the reinstatement order of the first award and the complaint should have been dismissed by the Industrial Court. The order of reinstatement was not a continuing act but involved a single act of the employer to put the employee back in employment as if he had not been dismissed. Once the employee had been put back in employment the order of reinstatement had been complied with. Thereafter, whatever happened to the respondent in his employment fell outside the scope of the reinstatement order. If the respondent had any grievance with the applicant over what had occurred after the reinstatement, it would constitute a separate cause of action. For example, if the employee was reinstated, he committed some misconduct resulting in the employer having to dismiss him. The subsequent dismissal did not entitle the employee to complain that the reinstatement order had been breached. What the employee was entitled to do was to make fresh representations over his second dismissal. He cannot seek reinstatement under the cloak of making a complaint that the reinstatement order had not been complied with. To do so would mean that the reinstatement order was a complete and permanent bar to the employer terminating an employee's services, even for cause. There have, in fact, been several cases where the minister had made references under s. 20(3) of the Act in respect of employees who had been dismissed after they had been reinstated - see for example, Award No. 486 of 1994 [1994] 2 ILR 1093. If the respondent was unhappy with what the applicant had done, he should have pleaded constructive dismissal or wait to be dismissed by the applicant and then make fresh representations under s. 20(1) of the Act.

As the respondent had in law and in fact been reinstated, it followed that there was no non-compliance within the meaning of s. 56 of the Act. The Industrial Court in concluding otherwise, acted in excess of jurisdiction and/or without jurisdiction, in that:

(a) it failed to take relevant matters into consideration; and

(b) it reached a decision that was so perverse and devoid of plausible justification that no reasonable tribunal similarly circumstanced would have reached.

A perusal of the third award will show that the Industrial Court's decision was based almost entirely on its construction of the applicant's letter of 16 November 1993. In its letter of 16 November 1993, the applicant required the respondent to give written confirmation that he was no longer in the employment of Car Seats (M) Sdn. Bhd. failing which they would take it that he was still in Car Seats' employment and the applicant would be at liberty to treat the reinstatement as void and act accordingly. It must be borne in mind that it was an express term of the respondent's employment with the applicant that he cannot be in gainful employment elsewhere (cl. (iv) of MY-5 at p. 56). Similarly, it was implicit in any order of reinstatement that the employee must leave his current employer in order to comply with the reinstatement order. It therefore followed that the applicant's request for the written confirmation was, in the circumstances, amply justified. It was made in furtherance of the company's reinstatement of the claimant. The Industrial Court, however, held that the foregoing request of the applicant had diluted and varied the effect of the reinstatement order and had therefore not reinstated the respondent on the strength of the aforesaid letter.

It is submitted by counsel for the respondent that severing the award in the instant case renders the rest of the award unworkable. It must be remembered that the award of backwages is separate and distinct from the backwages and the fact that the reinstatement order is being challenged does not render the backwages awarded earlier unworkable. The undisputed fact remains that the respondent had already been paid the backwages. The appellate and reviewing courts could interfere with the order of reinstatement and substitute the reinstatement order with some other order. In this regard, the following passages from O.P. Malhotra, *"The Law of Industrial Disputes"*, 5th edn, vol 2, has reference:

> "But in *Chembur Cooperative Industrial Estate v. M.K. Chatre* in spite of the fact that the plea of loss of confidence was not even raised before the Labour Court, the Supreme Court substituted the order of reinstatement by an order of compensation *in lieu* of reinstatement, in view of the facts relating

> to one of the charges. The plea of loss of confidence before the Supreme Court related to a charge which had not been proved before the Labour Court. If the charge had not been proved, as held by the Supreme Court itself, the question of loss of confidence on account of the facts relating to that charge could not arise. Likewise in *Ruby General Insurance Co. Ltd. v. P.P. Chopra*, this plea of loss of confidence was not raised before the Tribunal. But this plea was raised for the first time before the Supreme Court in support of the contention that the Tribunal ought not to have directed the workman's reinstatement. The Court accepted the plea in view of the fact that the workman being a stenographer in the establishment was in a position of confidence and trust. Since he abused that position by surreptitiously retaining the copies of certain correspondence, the management could not reimpose confidence in him, if reinstated, and would not be able to make use of his services as a stenographer. In the circumstances, the Court held that the Tribunal ought not to have directed reinstatement but ought to have awarded suitable compensation instead. (see page 1102).

In the case of *Thilagavathy a/p Alagan Muthiah v. Meng Sing Glass Sdn. Bhd. & Anor.* [1997] 4 CLJ Supp 368, Kadir Sulaiman J stressed that the order of reinstatement was separate from the backwages and stated at p. 372:

> But, whether or not the court makes the award, ie, by an order of reinstatement or an order for compensation *in lieu*, the issue of backwages is a separate matter altogether. It is an issue, though related to the fact of dismissal without just cause or excuse, that is not dependent on the type of order to be made upon the finding of dismissal without just cause or excuse.

The decision of the Federal Court in *V. Subramaniam & Ors. v. Craigielea Estate* [1982] 1 MLJ 317 is also directly on point and is binding. In that case, the Federal Court agreed that the Industrial Court's order reinstating the employees as confirmed employees was a nullity. The Federal Court held that the reinstatement order was severable from the rest of the award and proceeded to vary the award. The Federal Court held at p. 319:

> Mr. Nathan argued that in so doing the Industrial Court exceeded its jurisdiction. With respect we agree with Mr. Xavier that if this was a mistake, the award was severable and the High Court could quash that part which was a mistake without touching the rest. Accordingly we order that this appeal be allowed and that the order of the Industrial Court be restored save that the employees be reinstated only as trainees or on probation, as the case may be.

Therefore in the instant case, the award is clearly severable and the quashing of the reinstatement order will not render the rest of the award unworkable.

Section 32(1)(a) of the Act expressly states that the award is binding on all parties to the dispute. Section 33B(1) of the Act goes on to state that the award is final and conclusive. Therefore, nothing stated in the letter could in law or in fact vary or dilute the first award. Only the Industrial Court or the High Court in judicial review proceedings could vary the first award. Accordingly, in purporting to hold that a mere letter of the respondent could vary the first award of the Industrial Court and on that basis rule that there was no reinstatement, the Industrial Court had committed a fundamental jurisdictional error. In any event, the aforesaid letter was merely an expression of the applicant's intentions. The applicant never treated the reinstatement as void but merely indicated that it would be at liberty to do so if the respondent did not confirm that he had left Car Seats.

In *Holiday Inn*'s case *(supra)*, the Supreme Court stressed that it is a condition precedent of a complaint of non-compliance under s. 56 that there must be an actual act of non-compliance before the Industrial Court can exercise any of its powers under s. 56(2). Seah SCJ. stated:

> Since the Union failed to bring its case within the terms of section 56(1) of the Act and since proof of non-compliance of the collective agreement is a condition precedent to the exercise of the powers contained in subsection (2) of section 56 thereof, I am constrained to hold that the order of the Industrial Court dated February 18, 1981 was made without and/or in excess of jurisdiction.

I am of the view that even if the applicant had said that it will not reinstate the respondent or that it would treat the reinstatement as void, until and unless the event occurs, there is no non-compliance. In the present case, the respondent pre-empted the entire matter by refusing to report for duty. Even assuming that the applicant had imposed conditions that it should not have, it could not be used as an excuse for the respondent refusing to report for duty. This was precisely held by the Industrial Court in Award No. 158 of 1983 where Harun J (as he then was), stated:

> We are of the view that if there is an attempt by the Company to frustrate the Award, the Complainant's remedy is to stay on the job and make a complaint of non-compliance with the Award. He has not done so. Instead, he resigned on 4th April and wrote the complaint to the Court on 28 April which was received by the Court on 30 April. We find that in the circumstances of the case, the Complainant has resigned of his own free will and it is too late to complain of frustration of the Award.

In Award No. 158 of 1983, the claimant had reported for duty and then walked out because he alleged:

(a) he was not given any work;

(b) his colleagues did not speak to him; and

(c) new conditions of employment were imposed.

Although Award 158 of 1983 was cited, the Industrial Court in its decision never referred to it in its award nor did it give any reasons for failing to rely on it. As the Industrial Court's decision was based on a completely erroneous applicant's construction and interpretation of the applicant's letter of 16 November 1993, it followed that its decision was a nullity.

I therefore gave order in terms of the application in the originating motion dated 15 December 1998.